

1 All right. I have the index of
2 hearing exhibits. That's not the one I want.
3 Just a moment please. I'm sorry.

4 Here it is. Hearing exhibits and
5 written testimony of Comcast Cable
6 Communications, LLC. Let me go through these
7 first.

8 We have, you know, discussed
9 objections and potential objections, and we've
10 established rules this morning. There are
11 Exhibit Nos. 1 through 288. Are there any
12 specific exhibits that we have to look at now
13 or can I just receive them all?

14 MR. SCHMIDT: Other than the
15 depositions that we spoke about this morning,
16 which I think are out, nothing, Your Honor.

17 JUDGE SIPPEL: All right. Well,
18 what are we going to do with the depositions?

19 MR. SCHMIDT: It's our view that
20 they just shouldn't be part of -- I don't
21 think it's a big point of contention.

22 JUDGE SIPPEL: Yeah. Well, I

1 understand why you gave them to me in that
2 case.

3 MR. CARROLL: If you want us to
4 pull them out --

5 JUDGE SIPPEL: Yeah.

6 MR. CARROLL: -- I don't have any
7 problem doing that.

8 JUDGE SIPPEL: Why don't we do
9 that? Okay?

10 MR. SCHMIDT: Thank you.

11 JUDGE SIPPEL: But, you know, you
12 can leave me, leave on the table, or whoever
13 handles it, you can leave me what's -- you
14 don't have to take them back. You can just
15 leave them. What you take out you can leave
16 here --

17 MR. CARROLL: Sure.

18 JUDGE SIPPEL: -- in case there's
19 a reason to refer to it while there's an
20 examination. You know, invariably, a witness
21 might say, "Well, I said it there, but I
22 didn't say it." So you have to go look.

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1 So that will make sense and so we
2 won't clutter up the record with a whole --
3 what numbers would those be? Can you tell me
4 that?

5 MR. SCHMIDT: I think it's at
6 least Exhibit 3, 17, 21.

7 JUDGE SIPPEL: Three, 17.

8 MR. SCHMIDT: Twenty-one.

9 JUDGE SIPPEL: Twenty-one.

10 MR. SCHMIDT: Twenty-five.

11 JUDGE SIPPEL: Twenty-five.

12 MR. SCHMIDT: Thirty-two.

13 JUDGE SIPPEL: Thirty-two.

14 MR. SCHMIDT: Sixty-five.

15 JUDGE SIPPEL: Sixty-five.

16 MR. SCHMIDT: Sixty-six.

17 JUDGE SIPPEL: Sixty-six.

18 MR. SCHMIDT: Sixty-seven.

19 JUDGE SIPPEL: Sixty-seven.

20 MR. SCHMIDT: Eighty-one.

21 JUDGE SIPPEL: Eighty-one.

22 MR. SCHMIDT: Ninety-four.

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1 JUDGE SIPPEL: Nine, four.
2 MR. SCHMIDT: Ninety-five.
3 JUDGE SIPPEL: Nine, five.
4 MR. SCHMIDT: Ninety-seven.
5 JUDGE SIPPEL: Nine, seven.
6 MR. SCHMIDT: Ninety-eight and 99.
7 JUDGE SIPPEL: Ninety-eight, 99.
8 MR. SCHMIDT: One hundred and
9 nine.
10 JUDGE SIPPEL: One, oh, nine.
11 MR. SCHMIDT: One hundred and
12 ninety-nine.
13 JUDGE SIPPEL: One, ninety-nine.
14 MR. SCHMIDT: Two hundred.
15 JUDGE SIPPEL: Two hundred.
16 MR. SCHMIDT: And two, oh, one.
17 JUDGE SIPPEL: Two, oh, one.
18 MR. SCHMIDT: Yes, sir.
19 JUDGE SIPPEL: All right. And are
20 the specific parts of those exhibits
21 identified as the ones that you're relying on
22 so that they could be separated?

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1 MR. CARROLL: We have done a
2 separate designation of the testimony that
3 we're offering that has counter-designations.

4 JUDGE SIPPEL: All right, okay.
5 Well, I'll leave these all here, and somebody
6 can stay and figure out a way to pull them
7 out. The only thing I'm interested in is that
8 which is offered as direct testimony, and then
9 we'll see where we go from there.

10 Anything else? Mr. Carroll?

11 MR. CARROLL: Not on our exhibit
12 list that I know of.

13 JUDGE SIPPEL: Nothing from the
14 other side?

15 MR. SCHMIDT: Not that we haven't
16 raised, Your Honor.

17 JUDGE SIPPEL: All right. Then
18 subject to the previous rulings and this
19 ruling today, Comcast Exhibit Nos. 1 through
20 288 are received in evidence, and the reporter
21 will or the reporting company will stamp each
22 individually as identified and received in

1 evidence today, 13 April 2009.

2 (Whereupon, the documents referred
3 to were marked as Comcast Exhibit
4 Nos. 1 through 288 for
5 identification and were received
6 in evidence.)

7 JUDGE SIPPEL: That's it. Is
8 there anything else?

9 MR. CARROLL: Deposition
10 designations. Each side has designated
11 objected counter-designated. Let me see if
12 this is right. I don't know that we have a
13 need to hash through any of those at this
14 point unless my colleagues on the other side
15 feel differently.

16 MR. SCHMIDT: No, that's exactly
17 our view. Your Honor, there is one category
18 of deposition designations that is not
19 complete. So we think it makes sense to
20 complete that part of it and defer it to the
21 first trial proceeding because I don't think
22 it's something we're going to be putting in

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1 evidence formally during the trial. It would
2 be something that would go to Your Honor as
3 Your Honor makes the determination.

4 JUDGE SIPPEL: Well, the evidence
5 has to come in before they close the record on
6 the trial phase. So it has to be an effort to
7 straighten that out between now and whenever
8 we close the record.

9 MR. SCHMIDT: We would agree with
10 that, Your Honor. We would just think there
11 would be a short period after before we close
12 the record where we cab --

13 JUDGE SIPPEL: That's fine.
14 That's very reasonable.

15 Now, you mentioned there's a
16 pending discovery motion or there's something
17 pending.

18 MR. CARROLL: Yes, Your Honor.

19 JUDGE SIPPEL: What exactly is
20 that? Can we discuss that now?

21 MR. SCHMIDT: There's one on each
22 side, Your Honor. We initially filed a motion

1 to compel, and then Comcast responded with a
2 motion to compel. Our motion to compel went
3 to some of these affiliation agreements we've
4 been talking about that Comcast has entered
5 into, and then Comcast filed a motion to
6 compel on some of the topics that Your Honor
7 heard about this morning.

8 I think it's our position at that
9 point, at this point, given that we're the day
10 before trial, that they're effectively moot
11 because there is no way we could comply if we
12 were ordered to produce documents before the
13 hearing. I suspect there's no way Comcast
14 could comply if they were ordered to produce
15 documents before the hearing, and we just have
16 to proceed with the record that we can.

17 JUDGE SIPPEL: Mr. Carroll?

18 MR. CARROLL: Your Honor, I agree
19 that there's nothing that can be done today
20 that would involve production this week on
21 either of those motions. I think whether
22 they're moot or not should be a determination

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1 that's made at the end of the evidence this
2 week because Your Honor could decide that
3 there's some aspect of this case that you'd
4 like to hear more on if the record was not
5 complete and that it's covered by one of those
6 motions, and I wouldn't want to prejudge Your
7 Honor's ability to make that decision at the
8 end of the week.

9 But we agree as a practical matter
10 today it makes no sense for either one of us
11 to be trying to scramble, in addition to
12 everything else we're doing, and be producing
13 documents at the same time we're trying the
14 case.

15 JUDGE SIPPEL: Let me ask you
16 this. What date were these motions? Were
17 they cross-filed? Were they all filed
18 simultaneously or were they different dates?

19 MR. CARROLL: No.

20 MR. CARROLL: Ours was March 10th.

21 MR. SCHMIDT: And ours was about
22 the week before.

1 JUDGE SIPPEL: March 10? Comcast
2 motion, and how about Enterprise?

3 MR. SCHMIDT: I don't have our
4 date with me.

5 JUDGE SIPPEL: Okay.

6 MR. SCHMIDT: It was a few days
7 before Comcast.

8 JUDGE SIPPEL: Was it the first
9 one or was it after Comcast?

10 MR. SCHMIDT: It was before
11 theirs.

12 JUDGE SIPPEL: Okay.

13 MR. SCHMIDT: It was a couple days
14 before.

15 JUDGE SIPPEL: Okay.

16 MR. SCHMIDT: Mr. Toscano might be
17 helping me out here.

18 JUDGE SIPPEL: I can dig those up,
19 and was --

20 MR. TOSCANO: Enterprises' motion
21 was dated March 3rd, Your Honor.

22 JUDGE SIPPEL: Thank you.

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1 And was it replies and sur-
2 replies?

3 MR. SCHMIDT: Yes, sir.

4 JUDGE SIPPEL: Okay. I will dig
5 those out and see what this is, more to
6 educate myself as to more what this is about
7 now. Of course, I'm familiar with the general
8 issue that you're talking about.

9 Let me ask this question then.
10 What about the -- let's see. Those are
11 affiliations. I guess that would be -- is
12 there anything else pending beside those?

13 MR. CARROLL: Yes, Your Honor.

14 JUDGE SIPPEL: Being what?

15 MR. CARROLL: We have the motion
16 for judicial estoppel.

17 JUDGE SIPPEL: Oh, I want to ask
18 about that, yes. Thank you.

19 MR. CARROLL: Okay.

20 JUDGE SIPPEL: There's no reason
21 that has to be decided this week. That can
22 wait, can't it?

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1 MR. CARROLL: I think as a
2 practical matter where we are it makes perfect
3 sense for Your Honor to listen to the evidence
4 this week. I think, Your Honor, we'll need to
5 make a -- I don't think that will ever become
6 moot so compared to discovery because it gets
7 to issues as to whether they can take a
8 different position here than one they've taken
9 in New York principally on remedies that they
10 want, but I think there's no reason that you
11 would have to decide that before the hearing
12 starts.

13 It would have been useful --

14 JUDGE SIPPEL: Yeah.

15 MR. CARROLL: -- because it would
16 have given us a sense for the scope of some of
17 the issues we have to deal with here or not,
18 but given where we are, I think it's fine for
19 Your Honor to decide that in conjunction with
20 or after this hearing, but I do think that
21 motion does not go away.

22 JUDGE SIPPEL: Well, okay. I just

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1 wanted to know. What I do when I'm having --
2 obviously what I'm dealing with is an
3 allotment of time for myself. I will address
4 that certainly as readily as I can. I agree
5 I'd like to hear some of the testimony before
6 I go into that, and also I believe that there
7 are replies and sur-replies outstanding; isn't
8 that correct?

9 MR. CARROLL: It's fully briefed.

10 JUDGE SIPPEL: It is fully briefed
11 all the way?

12 MR. CARROLL: Yes, it's fully
13 briefed.

14 JUDGE SIPPEL: Okay. I'm running
15 out of excuses. All right.

16 MR. CARROLL: No, Your Honor.
17 With all of this paper, you don't need any
18 excuses in this case.

19 JUDGE SIPPEL: Well, anyway, what
20 I will do is I can see the relevance of it,
21 and you'll get a decision certainly, and I
22 really do want the time on that one now.

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1 MR. SCHMIDT: Thank you, Your
2 Honor.

3 JUDGE SIPPEL: The other,
4 hopefully, that I can come to grips with.

5 Now, the other question was,
6 however, that there was something about this
7 morning about whether or not somebody had not
8 been asked questions on deposition. Are there
9 anymore depositions that are absolutely
10 necessary?

11 MR. SCHMIDT: No, Your Honor.

12 JUDGE SIPPEL: No?

13 MR. SCHMIDT: No.

14 MR. CARROLL: No. I think that
15 the depositions have been taken unless -- no
16 my team is giving me the affirmative.

17 JUDGE SIPPEL: Well, I know in
18 general they've been taken, but I mean is
19 there anything? If there's anything that
20 really is very, very -- well, for example,
21 these new agreements, I'm curious about where
22 they come out. I understand the explanation

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1 as to relevance on both sides of this, but to
2 understand the whole picture here, I'm
3 inclined to want to hear something about
4 those.

5 MR. CARROLL: Well, Your Honor, my
6 adversary mentioned this morning that there's
7 an agreement they're going to be giving us
8 later today that we have not received.

9 JUDGE SIPPEL: That's correct. I
10 remember that.

11 MR. CARROLL: And so I'll look
12 forward to seeing that. I'm prepared at this
13 juncture to -- they start their case tomorrow
14 morning.

15 JUDGE SIPPEL: Correct.

16 MR. CARROLL: They've got their
17 witnesses on. I expect I'm going to have some
18 questions -- I may have some questions about
19 some of their witnesses about those most
20 recent agreements, and Your Honor will have a
21 chance then to appreciate fully the relevance
22 of it and how it fits in.

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1 I think that's not going to go
2 away. I think that information is relevant
3 certainly to the notion of any remedy that
4 would ever be awarded on the issue of it
5 there's no discrimination and we never get
6 past that issue, then I think you could make
7 an argument we really wouldn't need to worry
8 about those recent agreements.

9 JUDGE SIPPEL: All right.

10 MR. CARROLL: But those recent
11 agreements purport to be agreements with
12 others in the marketplace that have provisions
13 in them with respect to price and distribution
14 that it would seem would be relevant if you're
15 going to get into looking at those issues.

16 JUDGE SIPPEL: Well, I'm going to
17 have to take the evidence just from the time
18 standpoint. I've got to take the evidence on
19 remedy.

20 MR. CARROLL: Yes.

21 JUDGE SIPPEL: I don't know. I'm
22 not going to be in the position to -- I don't

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1 think that I'm not quite that quick -- I'm
2 going to have to look at the record before I
3 can make the cut on what you're saying,
4 although that's within the realm of
5 possibility.

6 Enterprise, anything to add to
7 that or subtract from that?

8 MR. SCHMIDT: No. It's our view
9 that discovery is done. Comcast has been
10 taking that view with respect to matters in
11 the FCC for some period. We've given them the
12 new documents as they have become available to
13 us. They're pretty straightforward documents
14 that are clear on their face where they can
15 sit down and look at them and figure out what
16 they say.

17 And as Mr. Carroll indicated, if
18 they want to ask their expert about them and
19 whether they affect his opinions, they can do
20 that. If they want to incorporate them into
21 their own experts' opinions, that's also
22 something they could do.

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1 But in our view the record is what
2 it is. We, frankly, thought the record was
3 closed before this most recent Echo Star
4 agreement was signed. Because we wanted to be
5 in a position where we had given them
6 everything, we gave them that agreement.

7 JUDGE SIPPEL: Well, as I say,
8 it's hard to close the record on a moving
9 target, in a sense, and we certainly can't
10 leave any wrinkles out there that haven't been
11 addressed, regardless of how relevant they end
12 up being.

13 How about the Bureau? Mr.
14 Schonman, anything?

15 MR. SCHONMAN: No, sir, nothing to
16 add.

17 JUDGE SIPPEL: Okay. Is it Mr.
18 Tagliabue we start with in the morning?

19 MR. SCHMIDT: Now, we wanted to
20 address that, Your Honor.

21 JUDGE SIPPEL: Thank you.

22 MR. SCHMIDT: What we'd like to

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1 start with, and we've spoken with Mr. Carroll
2 about this on the break, is we have four
3 witnesses. We have Frank Hawkins, who we
4 intend to offer as our first witness. We have
5 Hal Singer, our economist. We intend to offer
6 Dr. Singer as our second witness.

7 We have Ron Furman, who we intend
8 to offer as our third witness, and then Mr.
9 Tagliabue has scheduling difficulties. We
10 have reached an agreement with the other side
11 where he will be offered on the 16th, this
12 Thursday, subject to Comcast being able to
13 call Mr. Roberts, their witness, after Mr.
14 Tagliabue, which we have agreed to.

15 We also agreed that before today's
16 proceedings we disclosed our witness order to
17 colleagues on the other side. As I understand
18 it you're going to give us your witness order
19 tomorrow, which we appreciate.

20 In terms of the witnesses, we
21 understand from one of Your Honor's earlier
22 rulings that Your Honor was looking for a

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1 short, simple direct limited to a very brief
2 summary of what the witnesses talked about.
3 So our intent is to keep it less than 15
4 minutes for each of our witnesses, and they
5 get opened up for cross. Then they're subject
6 to redirect.

7 I mentioned to Mr. Carroll that it
8 would be helpful to have some sense on our
9 side of how long they intend to cross our
10 witnesses for because Mr. Furman has an event
11 on Wednesday that he's planning on going to.
12 He'll cancel it if need be, and it sounds like
13 from Mr. Carroll need will be, that we're not
14 going to get to Mr. Furman Tuesday.

15 So we will plan on calling Mr.
16 Hawkins and Dr. Singer tomorrow, and Mr.
17 Furman Wednesday, and then turning the case
18 over to Comcast at some point on Wednesday.

19 We also think -- let me leave it
20 at that.

21 JUDGE SIPPEL: So Wednesday is
22 when Comcast's cross-examination will start?

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1 MR. SCHMIDT: No, I'm sorry.

2 MR. CARROLL: That's when our
3 case-in-chief will start.

4 JUDGE SIPPEL: That's when your
5 case-in-chief will start.

6 MR. CARROLL: That's what I
7 understand from my friends. My understanding
8 is that they're going first and --

9 JUDGE SIPPEL: Yeah, they have to
10 go first.

11 MR. CARROLL: Yeah, and one of
12 their witnesses can't appear. Mr. Tagliabue
13 is unable to appear during their case. We
14 were accommodating, and we said fine. We'll
15 let you call him out of order and call him
16 during my case on Thursday.

17 JUDGE SIPPEL: I hear you.

18 MR. CARROLL: Because I figured it
19 would be the fairest thing to do, as long as
20 there's at least one of our witnesses who
21 still goes after him, and that's been agreed
22 to.

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1 The order of the witnesses they're
2 proposing is otherwise fine with us. As to
3 their first witness, I do have one issue that
4 I wanted to raise with Your Honor when it's
5 the appropriate time to raise it.

6 JUDGE SIPPEL: Okay. Well, we're
7 all set on that then. That's going to be the
8 order, and 16 April, do we have a time? I
9 mean is he going to be available in the
10 morning?

11 MR. LEVY: Yes, he's been
12 available at the start of the hearing day.

13 JUDGE SIPPEL: Okay, and he is --
14 okay. I'm not going to ask anything more
15 about that.

16 So okay. Now, go ahead. You were
17 going to say something about Mr. Hawkins?

18 MR. CARROLL: Yeah, Mr. Hawkins,
19 Your Honor, who is their first witness, first
20 of all, they have three fact witnesses and one
21 expert. Mr. Winger is their expert.

22 MR. SCHMIDT: Dr. Singer.

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1 MR. CARROLL: Doctor. We have
2 doctors, too. Fine.

3 JUDGE SIPPEL: All right. That's
4 fine.

5 MR. CARROLL: I'm focusing on the
6 fact witnesses, and none of them are doctors.

7 There are three fact witnesses:
8 Hawkins, Furman, and Tagliabue.

9 JUDGE SIPPEL: All right.

10 MR. CARROLL: And our
11 understanding -- and they've been disclosed as
12 fact witnesses, not experts -- and our
13 understanding is that that means they testify
14 about things that they have some personal
15 familiarity with based on their own factual
16 involvement, and they're not going to give
17 expert opinions.

18 Now, the relevance of that to Mr.
19 Hawkins is the following. He left the NFL.
20 He's no longer employed by the NFL. He left
21 the NFL in June of 2008, opened his own
22 consulting job, and he's a paid consultant who

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1 works for the NFL and has a consulting/expert
2 witness.

3 When I look at his proposed
4 witness testimony, he's got a mix in it now,
5 a melange of things that come from when he was
6 an employee of the NFL and has some knowledge
7 of and some things that come separately that
8 look like they're just expert opinions he
9 wants to offer in.

10 I have an objection to anything in
11 the way of an expert opinion from Mr. Hawkins.
12 I don't think that's called for, and he should
13 be here as a fact witness to testify about
14 whatever he knows from the time he was an
15 employee of the NFL.

16 I don't know whether that's
17 objectionable. Hopefully, it's not from the
18 other side, and again, there are some places
19 in his proposed direct testimony where it sure
20 looks to me like he's getting into expert type
21 opinions based on information that comes after
22 he left the NFL.

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1 JUDGE SIPPEL: Okay. Mr. Schmidt.

2 MR. LEVY: Your Honor, Mr. Hawkins
3 is, as Mr. Carroll makes clear, is a former
4 employee of the NFL. He is a former executive
5 of the NFL. He was there for nearly 15 years.
6 Virtually everything that he's going to
7 testify about is information that was known to
8 me or events in which he participated or he's
9 addressing materials on which he relied in the
10 ordinary course of business when he was there
11 at the NFL.

12 If there are specific issues that
13 Mr. Carroll has that he thinks fall into the
14 category of expert opinion, then, you know,
15 we're happy to hear about them, but as you'll
16 see when you meet Mr. Hawkins tomorrow, he is
17 very knowledgeable about the industry. That
18 was his role at the NFL. He served as an
19 advisor on strategic affairs, as well as a
20 lawyer, as well as an administrator, as well
21 as a negotiator, and what he is providing in
22 his direct testimony, as Your Honor will see,

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1 is factual information for the most part.
2 Virtually all is factual information of things
3 with which he was familiar and that he had to
4 address in his capacity as a senior NFL
5 executive who dealt with communications
6 matters.

7 JUDGE SIPPEL: Okay. Well, what
8 we'll do is we'll just take it one at a time.
9 You're going to have marked for identification
10 his written testimony or it has already been
11 marked in, but he's going to take the stand
12 with his written testimony, and before we
13 start then on his direct, we can maybe clear
14 that up. Is there anything specifically in
15 the direct testimony you're going to object
16 to?

17 MR. CARROLL: Yes.

18 JUDGE SIPPEL: And if there's
19 something in there that looks to you like an
20 opinion, we'll take it up at that time.

21 MR. CARROLL: Okay.

22 JUDGE SIPPEL: And with the

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1 witness right on the stand, and that way he
2 can explain it if it's necessary, and then
3 we'll just go from that.

4 MR. CARROLL: That's fine.

5 MR. SCHMIDT: One thing I would
6 ask, and I might just say this because I think
7 you had something in front of you. If you
8 could tell us that in advance, we'd sure be
9 grateful for that.

10 MR. CARROLL: Well, I don't have a
11 problem giving, for example, Paragraph 15 of
12 his proposed written statement includes
13 information from December of 2008, after he
14 left the NFL. There's no way he got personal
15 knowledge of that while he was an NFL
16 employee, and it relates to opinion type
17 information. He's drawing some opinion about
18 fact information.

19 And another paragraph that I --
20 and there are some exhibits on the exhibit
21 list that are associated with him that all
22 post date when he left the NFL. And we can

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1 give you those exhibits in particular. We can
2 give you an exhibit list.

3 And then lastly, Paragraph 33 of
4 his direct statement is all of this
5 information about advertising. My
6 understanding is that he got all of this from
7 another witness who may be hearsay as well on
8 this, from Mr. Furman, who is going to testify
9 about advertising, and I think he is just
10 regurgitating the Hawkins testimony that
11 another witness is going to give, and again,
12 maybe an expert gets to do that, but I don't
13 think a fact witness gets to do that.

14 MR. LEVY: We will be prepared to
15 address those issues tomorrow. I don't think
16 we're going to have any real issues.

17 JUDGE SIPPEL: Yeah, okay. Yes,
18 that's fine.

19 MR. CARROLL: Okay.

20 JUDGE SIPPEL: That's the best way
21 to do it, but I appreciate the heads up. I
22 got the numbers, the paragraph numbers, and I

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1 have the testimony.

2 But I agree. In a general
3 proposition, yes, I think that certainly it's
4 going to require that he have either personal
5 knowledge of the information or some reason to
6 have received the information from a reliable
7 source, but for what purpose? I certainly
8 don't want repetitious testimony. That's not
9 what we want. If it's just repetitious
10 testimony, then I'm not interested in hearing
11 it.

12 On the other hand, if it's
13 something different, all right. Well, let's
14 find out, and we'll make the rulings.

15 And you think that we can have
16 them on and off the stand in one day; is that
17 right?

18 MR. SCHMIDT: We've said what we
19 intend to do, Your Honor.

20 JUDGE SIPPEL: Yes.

21 MR. SCHMIDT: This is going to be
22 very short direct. That really is up to

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1 opposing counsel --

2 JUDGE SIPPEL: Well, all right.

3 MR. SCHMIDT: -- as to how long
4 they intend to cross.

5 JUDGE SIPPEL: Well, we'll find
6 out. Obviously you can't commit to what it's
7 going to take you.

8 Now, that takes care of Tuesday,
9 Wednesday, and then you have to get your case
10 in. Are we going to be able to finish this by
11 Friday?

12 MR. CARROLL: Well, we've allotted
13 two days for each side for testimony, and I
14 think the NFL is indicating we'll have the
15 case handed to us some time Wednesday, subject
16 to Tagliabue still coming in in the middle of
17 our case.

18 JUDGE SIPPEL: Yeah.

19 MR. CARROLL: So I think we're on
20 target to do that.

21 JUDGE SIPPEL: All right, but if
22 you start on Monday on the Wealth TV case. So

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1 you've got work to do.

2 MR. SCHMIDT: And the only reason,
3 Your Honor, that I raised the point about the
4 15 minute introductions is I think it's in the
5 parties' interest to have symmetry on that
6 issue.

7 JUDGE SIPPEL: I'm all for it.

8 MR. SCHMIDT: Okay. Thank you.

9 JUDGE SIPPEL: I'm all for it.
10 All right. I don't want to belabor anything
11 here.

12 MR. CARROLL: Well, Your Honor,
13 let me just come back to the point Mr. Schmidt
14 just made. I think when he said symmetry what
15 he means is he's planning 15 minutes of direct
16 with his witnesses and he wants me to have no
17 more than 15 minutes direct with my witnesses.
18 In the abstract I have no problem with that,
19 except I go second. They put their case in
20 first, and then I go.

21 Now, depending on what comes in in
22 their case, there may be something I want to

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1 address with one or two of my witnesses in my
2 case, and it may be more than 15 minutes, and
3 I don't want this exchange that just happened
4 to be abused to be invoked two days from now
5 as a limit on the length of my direct if
6 there's something that I need to address with
7 one of those witnesses.

8 JUDGE SIPPEL: Well, now, thanks
9 for bringing that to my attentions. I did not
10 consider myself to be ruling on a clock in the
11 context. I am just looking to see, I'm just
12 looking for you to give me an idea of what to
13 expect, and you did. You said, you know --
14 now, whether or not it's 15 minutes for you
15 and 20 to 30 minutes for you, whatever. I'm
16 just interested in getting the case finished
17 by Friday.

18 MR. SCHMIDT: And that's all we're
19 interested in, too, Your Honor. We wouldn't
20 want to be in a position where we just don't
21 have time to conduct the scope of cross
22 examination we want to conduct because I don't

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1 understand Mr. Carroll to be saying this. So
2 I think it's a moot point, but if they wanted
3 to walk through in detail with every one of
4 their witnesses to go back to testimony, that
5 would eat up a lot of time.

6 JUDGE SIPPEL: Well, that's not
7 going to happen.

8 MR. SCHMIDT: Thank you, sir.

9 JUDGE SIPPEL: That's not going to
10 happen. But, you know, these general
11 assumptions of everything is going to be
12 smooth, I made a very simple -- my goal is a
13 simple request, you know, for a glossary of
14 terms, and I should have done it differently
15 because now it turns into almost an
16 argumentative piece.

17 Now, I'm not criticizing that.
18 It's a natural thing, but I want to point out
19 I'm going to require this, that when you
20 submit proposed findings, and I'm not sure if
21 that would be the -- yes, when you submit
22 proposed findings, I want a stipulated

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1 glossary of terms so that if I'm using terms
2 like, you know, whatever it might be, a la
3 carte or something like that, that I'm using
4 a concept that everybody is on the same page
5 with.

6 But, again, I'm not criticizing
7 what you did for me. I understand what's been
8 done, and it's helpful. At least it gives me
9 an idea as to what the parties are thinking,
10 and that's important. So we'll straighten
11 that out, but it's hard to say that what's
12 good for the goose is always good for the
13 gander, but we'll do that. To the extent that
14 we can do it, we'll apply that principle.

15 Now, is there anything else?

16 I appreciate your patience. This
17 is an excellent job on a very complicated
18 document day. I'm very pleased the way it
19 went, and we'll see each other tomorrow then
20 at 9:00 a.m., correct? Nine, thirty a.m., I'm
21 sorry, 9:30 a.m., and we'll start with -- now,
22 the witnesses are going to be coming from out

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1 of town, I take it.

2 MR. LEVY: Most of them, yes.

3 JUDGE SIPPEL: Because I want to
4 accommodate them, particularly when we get
5 towards the afternoon. If we have 30 minutes
6 to finish somebody I'm not going to cut it off
7 so that he can fly out tomorrow night.

8 MR. LEVY: Good. thank you.

9 JUDGE SIPPEL: On the other hand,
10 you know, I don't want to drag it out till
11 nine o'clock at night.

12 So okay. This is a good start.
13 So let's see what happens tomorrow morning.
14 Thank you very much.

15 PARTICIPANTS: Thank you, Your
16 Honor.

17 JUDGE SIPPEL: We are in recess
18 until 9:30 tomorrow.

19 (Whereupon, at 1:17 p.m., the
20 above-entitled matter was adjourned, to
21 reconvene at 9:30 a.m., Tuesday, April 14,
22 2009.)

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NFL v Comcast

Name of Hearing

MB DOCKET NO. 08-214

Docket No. (if applicable)

445 12th STREET, S.W., WASHINGTON, D.C.

Place of Hearing

April 13, 2009

Date of Hearing

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April 13, 2009

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Date

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